Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	IB Docket No. 95-22
Market Entry and Regulation	)	RM-8355
of Foreign-affiliated Entities	)	RM-8392

PETITION FOR RECONSIDERATION

MCI TELECOMMUNICATIONS CORPORATION

Paula V. Brillson
John M. Scorce
Donald J. Elardo
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 887-2006

Its Attorneys

Dated: January 29, 1996

Table Of Contents

SUMMARY

The Commission formulated its effective competitive opportunities test to promote the goals of opening entry for U.S. carriers in foreign markets and of preventing foreign carriers with an affiliation with a U.S. carrier from engaging in discriminatory or anticompetitive conduct as among U.S. carriers. MCI wholeheartedly supports the Commission's goals, however, MCI is concerned over the practical consequences of several decisions and makes several recommendations as set forth in this petition for reconsideration.

First, MCI recommends that the Commission impose a routine reporting requirement obligation on U.S. carriers that enter into co-marketing and other non-equity business relationships with foreign carriers, and it should require that their agreements be filed with the Commission pursuant to its authority under Section 211 of the Communications Act of 1934, as amended. This will allow the Commission to be in a position to have and to obtain information to evaluate whether these arrangements impose a potential anticompetitive effect on the U.S. international services market. Furthermore, when the Commission determines that a co-marketing or other non-equity arrangement presents a substantial risk of anticompetitive conduct in the provision of international services, it should subject those U.S. carriers to dominant carrier regulation.[1]

Second, the Commission should reconsider its decision to

---

[1] See Report and Order at ¶¶ 93-95, 252-55.

permit certain facilities-based U.S. carriers to provide switched services over private lines interconnected to half-circuits provided by non-correspondents and connected to the public switched network at one-end only, while denying the same opportunity, on the same routes, to facilities-based carriers that have a correspondent relationship with the carrier providing the foreign half-circuit. Accordingly, the Commission should revise its policy to afford all U.S. facilities-based carriers equal opportunity to engage in international switched resale.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	IB Docket No. 95-22
Market Entry and Regulation	)	RM-8355
of Foreign-affiliated Entities	)	RM-8392

PETITION FOR PARTIAL RECONSIDERATION

MCI Telecommunications Corporation (MCI), pursuant to Section 1.429 of the Commission's Rules, requests that the Commission reconsider its Report and Order, FCC 95-475 (rel. Nov. 30, 1995)[2], in the above-captioned proceeding in two limited, but very significant, respects.

I. INTRODUCTION

MCI strongly supports the Commission's efforts in this proceeding to open foreign markets to U.S. international carriers by applying its "effective competitive opportunities" test as an important element of its public interest analysis under Section 214 of the Act whenever applications are filed by foreign carriers seeking to enter the U.S. international services market through affiliation with U.S. carriers, or by establishing a subsidiary utilizing switched or non-switched resale. The new entry standard is essential because, as the Commission observed,

---

[2] 60 Fed. Reg. 67332 (Dec. 29, 1995).

"effective competition" between U.S. and foreign carriers "will [not] occur if foreign carriers that continue to hold market power in foreign markets are allowed unlimited access to the U.S. market."[3] Moreover, the effective competitive opportunities test is clearly an appropriate exercise of the Commission's authority under Sections 214 and 310(b)(4) of the Communications Act.

As the Commission recognized, effective competition between U.S. and foreign carriers can only develop if two conditions are satisfied. First, the Commission must employ regulatory policies and effective regulatory oversight in order to detect and preclude foreign carriers from engaging in undue discrimination and exclusionary practices relative to U.S. carriers.[4] And, second, foreign carriers cannot be allowed to engage in strategic alliances with U.S. carriers that foreclose other U.S. carriers from competing effectively.[5] Accordingly, the Commission should impose a reporting requirement obligation on U.S. carriers engaged in co-marketing or other business arrangements irrespective of whether the alliance is formed by an equity investment or non-equity agreement. This requirement would be fully consistent with the Commission's goals in this proceeding and, not coincidentally, the public interest.[6]

---

[3] Id. at ¶ 1.

[4] Id. at ¶ 13.

[5] Id. at ¶ 14.

[6] The Commission's goals are to: (1) promote effective competition in international telecommunications services;
(continued...)

In addition, the Commission should reconsider its decision to permit certain facilities-based U.S. carriers to provide switched services over private lines interconnected to half-circuits provided by non-correspondents and connected to the public switched network at one-end only, while denying the same opportunity, on the same routes, to facilities-based carriers that have a correspondent relationship with the carrier providing the foreign half-circuit.

II. THE COMMISSION SHOULD IMPOSE A REPORTING REQUIREMENT OBLIGATION ON NON-EQUITY BUSINESS RELATIONSHIPS BETWEEN U.S. AND FOREIGN CARRIERS

The Commission decided that non-equity business relationships between U.S. and foreign carriers do not constitute "affiliations" for purposes of applying its effective competitive opportunities test. In the Commission's view, those activities did not involve foreign carriers in the provision of common carrier services in the U.S. international market, and it believed that applying the effective competitive opportunities test to those activities would be difficult to achieve and would not likely open foreign markets.[7]

Nonetheless, the Commission acknowledged that non-equity business relationships between U.S. and foreign carriers could present serious anticompetitive risks of collusive conduct. For

---

(...continued)
(2) prevent anticompetitive conduct in the provision of international services; and (3) encourage foreign governments to open their telecommunications markets. Id. at ¶ 6.

[7] Id. at ¶ 95.

this reason, the Commission decided that such relationships "warrant increased regulatory scrutiny,"[8] and it would "impose dominant carrier regulation on a U.S. carrier for its provision of international basic service on particular routes where a co-marketing or other arrangement with a dominant foreign carrier presents a substantial risk of anticompetitive effects in the U.S. international services market."[9] In addition, given these concerns, the Commission decided to apply its "no special concessions" requirement to all U.S. carriers entering into non-equity agreements with foreign carriers.[10] However, rather than require the filing of those agreements and other relevant information, the Commission merely reserved the right to require the submission of those agreements "where we believe such a review is appropriate."[11]

The flaw in the Commission's reasoning is that, in the absence of routinely filed information about a non-equity business arrangement between a U.S. and a foreign carrier, the Commission would never know when, and whether, any review of that

---

[8] Id.

[9] Id. at ¶ 253.

[10] Id. at ¶¶ 95, 256-59. The "no special concessions" policy prohibits U.S. carriers from agreeing to accept special concessions, directly or indirectly, from any foreign carrier with respect to traffic or revenue flows. It defines a "special concession" as an arrangement offered exclusively to a given U.S. international carrier that is denied to other international carriers. See Sections 63.14 and 63.01(r)(3)(i) of the Commission's Rules.

[11] Id.

arrangement is "appropriate" and when to impose dominant carrier regulation on the U.S. participant. Thus, the Commission effectively denied itself the ability to learn of and acquire information concerning the very anticompetitive and exclusionary practices that could have "substantial anticompetitive effects."

Co-marketing and other non-equity business relationships, particularly those involving a dominant foreign carrier, can indeed present serious anticompetitive problems that could damage the U.S. international service market. The combined market power of a U.S. carrier and a foreign carrier, when exercised through a co-marketing or similar arrangement, could be formidable when directed against non-allied U.S. carriers, especially if the foreign carriers control "bottleneck" facilities in the markets they serve. The foreign carriers would possess both the incentive and ability to discriminate against non-allied U.S. carriers in connection with proportionate return traffic, accounting rates, interconnection terms, and the introduction of new services.

Review of these non-equity alliances is therefore essential and can occur only when the Commission has adequate knowledge of their existence. Clearly, the most effective way for the Commission to obtain that information would be by the mandatory filing of relevant agreements, as well as reports of the operation of U.S. carrier participants in those agreements. Accordingly, the Commission should reconsider and modify its Report and Order as shown herein.

First, the Commission should require all U.S. carriers to file copies of any non-equity business-relationship agreements with the Commission within 30 days of their execution. (For any such existing agreements the Commission should require that they be filed with the Commission with 30 days of the release of the order on reconsideration.) Second, the Commission should impose the following reporting requirement obligations on U.S. carriers participating in non-equity business relationships with foreign carriers: (1) file semi-annual circuit status reports; (2) maintain complete records on the provisioning and maintenance of the network facilities and services procured from a foreign partner, including those which it procures on behalf of customers of the foreign partner, and make those records available to the Commission upon request; (3) file quarterly reports of revenue, number of messages and number of minutes of both originating and terminating traffic generated by the non-equity agreement within 90 days from the end of each calendar quarter; and (4) file all contracts and arrangements relating to the non-equity agreement concerning the routing of traffic and settlement of accounts on routes covered to the extent these are not filed with the Commission pursuant to Section 43.51 of the Commission's Rules.[12]

---

[12] In its Comments in this proceeding, MCI recommended that the Commission adopt the foregoing reporting requirements, but the Commission did not address MCI's proposal in its Report and Order. See MCI Comments at 12-15. These reporting requirements are analogous to those adopted by the Commission in approving the acquisition by BT of an ownership interest in MCI. See MCI Communications Corporation/British Telecommunications plc, 9 FCC Rcd 3960, 3973 (1994). The Commission recently (continued...)

These measures would not impose any additional burdens on U.S. carriers because the data to be filed, or made available to the Commission upon request, would be routinely collected by U.S. carriers in any event. Furthermore, the submission of such data is fully consistent with the Commission's authority under Sections 211 and 4(i) of the Act. Yet, the data would be of immense value to the Commission in ascertaining whether any given non-equity business relationship presented such anticompetitive concerns as to warrant closer regulatory scrutiny, including the possible imposition of dominant carrier regulation.

When a U.S. carrier could demonstrate that an arrangement does not give rise to a substantial risk of anticompetitive impact, i.e., where the foreign carrier participating in an alliance is non-dominant and does not control bottleneck facilities, the Commission might consider waiver requests of the reporting requirement obligation. In addition, imposing these reporting requirement obligations should have a salutary deterrent effect, as U.S. carriers undoubtedly would be more circumspect when engaging in non-equity alliances if they were aware that their arrangements were subject to meaningful Commission oversight.

(...continued)
imposed similar reporting requirements on Sprint in approving the acquisition of an ownership interest in Sprint by France Telecom and Deutsche Telekom. See Sprint Corporation, FCC 95-498 (rel. Jan. 11, 1996) at ¶¶ 116-128.

III. THE COMMISSION MUST CURE THE DISCRIMINATION THAT FAVORS SOME FACILITIES-BASED CARRIERS OVER OTHERS

In the Report and Order, the Commission adopted a new policy aimed at stimulating increased competition in foreign markets and increased foreign outbound traffic, and encouraging foreign carriers to reduce their collection and accounting rates. The policy would permit U.S. facilities-based carriers to provide switched services over their private lines without a demonstration of equivalency or obtaining additional Section 214 authority.[13] The Commission thus decided to allow U.S. carriers to provide switched services over facilities-based private lines interconnected to the public switched network at one-end only, provided that the foreign carrier directly or indirectly owning the half-circuit is not a correspondent[14] -- subject to two exceptions.

First, the policy does not apply where switched traffic is carried over facilities-based private lines interconnected to the public switched network at both ends. In that case, the Commission reasoned that there was too great a potential for diverting significant amounts of traffic from the settlements process.[15] MCI supports the decision to require U.S. carriers seeking interconnection at both ends to obtain Section 214

---

[13] Id. at ¶ 157.

[14] Id. at ¶ 161.

[15] Id. at ¶¶ 157-161.

authority and to demonstrate "equivalency."[16] By limiting its policy to interconnection at one end only, the Commission effectively has reduced the amount of traffic subject to diversion from the switched network and, accordingly, the amount settlement revenues to be lost by U.S.-based facilities carriers. At the same time, the policy promotes competition with the foreign-based carrier and exerts pressure on foreign administrations to reduce accounting rates and open their markets to competition.

Second, the policy does not apply where the foreign carrier directly or indirectly providing the half-circuit corresponds with the U.S. carrier in a market which does not offer equivalent resale opportunities. In this case, the Commission stated that allowing switched traffic to be carried over private lines would not create any competition for the foreign facilities-based carrier.[17]

MCI fully supports the Commission's effort to encourage increased competition with foreign carriers by allowing for the provision of switched services over facilities-based private lines. However, the policy unreasonably and unfairly denies U.S. carriers with correspondent relationships the ability to engage

---

[16] Id. at ¶ 161.

[17] Id. at ¶ 159. In its Report and Order, the Commission amended its rules "to define a U.S. international facilities-based carrier as one that holds an ownership, indefeasible-right-of-user, or leasehold interest in an international facility, regardless of whether the underlying facility is a common or non-common carrier submarine cable, or an INTELSAT or separate satellite system." Id. at ¶ 130.

in switched services resale, while conferring competing U.S. carriers lacking a correspondent relationships with the ability to engage in such resale. Under the Commission's policy, a U.S. facilities-based carrier could lease circuits from a foreign carrier with which it does not have correspondent relationship, interconnect those circuits to its private lines, and deliver that traffic into the public switched network at one-end. By contrast, a competitor possessing a correspondent relationship with that same foreign carrier on the same route could not deliver switched services traffic over circuits leased from that foreign carrier by interconnecting those circuits to the same public switched network. Clearly the Commission could not have intended such a result since it is so anticompetitve in effect.

The apparent rationale for the distinction -- that "[s]uch an instance would not create any competition to the foreign facilities-based carrier"[18] -- is not well-founded. While correspondent-type U.S. carriers may not compete with their foreign correspondents,[19] they nevertheless will be competing against non-correspondent-type U.S. facilities-based carriers. And, both types of carriers must compete for the same large customers. As the Commission noted, "[l]imiting the provision of these services to instances where the customer must connect to the international circuit via dedicated access on one end would

---

[18] Id. at ¶ 159. The point must be clarified that all U.S. "facilities-based carriers"

[19] Id. at ¶ 159.

result in this service being provided only to customers with sufficient international traffic volumes to justify the expense of a dedicated local connection."[20]

Thus, the Commission's policy is aimed at stimulating competition between U.S. and foreign carriers for large customers. Unfortunately, as adopted, the policy favors one class of U.S. facilities-based carriers and precludes another class from competing for the same customers. This is plainly anticompetitive in effect and can only result in a finding that the policy leading to it is arbitrary and capricious and contrary to the public interest.

Moreover, the Commission would be undercutting its basic goal of encouraging more competition for foreign carriers, stimulating the growth of foreign outbound traffic, pressuring foreign carriers into reducing their collection and accounting rates, and opening their markets to competition. Accordingly, the Commission should reconsider and revise its policy and permit all U.S. facilities-based carriers to have the same interconnection opportunity, irrespective of whether a foreign carrier is a correspondent.

---

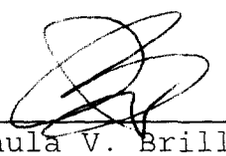
[20] Id. at ¶ 160.

IV. CONCLUSION

For the reasons stated above, the Commission should grant MCI's petition for reconsideration.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION

By 

Paula V. Brillson
John M. Scorce
Donald J. Elardo
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 887-2006
Its Attorneys

Dated: January 29, 1996

CERTIFICATE OF SERVICE

I, Hilary Soldati, do hereby certify that the foregoing "PETITION FOR RECONSIDERATION" was served this 29th day of January, 1996, by first-class mail, postage prepaid, on the following parties listed below:

Dr. T. P. Quinn
Secretary of Defense
OASD (C3I)
Pentagon, Room 3E160
Washington, D.C. 20301-3040

John Grimes
Secretary of Defense
Pentagon, Room 3E194
Washington, D.C. 20301-3040

Carl Wayne Smith
Code AR Defense Information
Systems Agency
701 South Courthouse Road
Arlington, VA 22204

Office of General Counsel
Nat'l Security Agency
9800 Savage Road
Bethesda, MD 20817

Keith H. Fagan
COMSAT Communications
6560 Rockspring Drive
Bethesda, MD 20817

Gail Polivy
GTE Hawaiian Telephone Co.
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036

Charles A. Husman
Bureau of International Communications and
Information Policy
Department of State
Room 6312
2201 C Street, N.W.
Washington, D.C. 20520

Richard Beaird
Bureau of International Communications and
Information Policy
Department of State
4th Floor
2201 C Street, N.W.
Washington, D.C. 20520-1428

Michael Fitch
Bureau of International Communications and
Information Policy
Department of State
4th Floor
2201 C Street, N.W.
Washington, D.C. 20520

Thomas Sugrue
Deputy Assistant Secretary for
Communications and Information
NTIA
Department of Commerce
Room 4898
14th St. & Constitution Ave., N.W.
Washington, D.C. 20230

Robert A. Lutkoski
Bureau of International Communications and Information Policy
Department of State
Room 5310
2201 C Street, N.W.
Washington, D.C. 20520

Robert S. Koppel
WorldCom
15245 Shady Grove Road
Suite 460
Rockville, MD 20850-3222

John Dalton
Secretary of the Navy
Department of the Navy
Pentagon
Washington, D.C. 20310

Suzanne Settle
NTIA
Department of Commerce
Room 4701
14th & Constitution Ave., N.W.
Washington, D.C. 20230

Carol Darr
Office of International Affairs
NTIA
Room 4720
14th & Constitution Ave., N.W.
Washington, D.C. 20230

Vonya B. McCann
Ambassador
4th Floor/CIP
2201 C Street, N.W.
Washington, D.C. 20520

Leon M. Kestenbaum
Michael B. Fingerhut
Sprint Communications
1850 M Street, N.W.
11th Floor
Washington, D.C. 20036

Carl Willner
Antitrust Division
U.S. Department of Justice
555 4th Street, N.W.
Washington, D.C. 20001

Stephen Garavito
Elaine R. McHale
James J. R. Talbot
295 N. Maple Avenue
Room 3235A3
Basking Ridge, NJ 07920

Hilary Soldati